



Freedom of Expression in the Schools

**Indiana Close Up
A Jefferson Meeting
on the Indiana Constitution**



Issue Book Number 4



Thank you

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Additional thanks are due the following individuals, organizations, and parts of state government for their help:

Office of the Attorney General
Indiana Council for the Social Studies
Indiana Department of Administration
Indiana Department of Education
Indiana House of Representatives
Indiana Senate
Indiana Supreme Court

with funding from the Close Up Foundation and the Indiana Humanities Council in cooperation with the National Endowment for the Humanities.

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The Jefferson Meeting format requires analysis, critical thinking, public speaking, and cooperative work by participants no matter their level of ability. The Meeting links the Constitution with issues currently in the spotlight and has been called a history lesson with a focus on the present and a civics lesson with historical perspective.

The Jefferson Foundation is located at 1529 18th Street, N.W., Washington, D.C. 20036; telephone 202-234-3688.

Availability

Copies of this publication are available from the Indiana Historical Bureau, 140 North Senate Avenue, Room 408, Indianapolis, Indiana 46204-2296. Call for details: 317-232-2535/TDD 317-232-7763/FAX 317-232-3728.

Disclaimer

This issue essay should be used as an educational aid to encourage discussion and study. It is not a complete revelation of the current law. The legal issues referred to are far more complex than we are able to address in this format.

The provisions of the Indiana Bill of Rights regulating freedom of expression should apply to students in schools.

The Issue

- Constitution of Indiana

Article I, Section 9. (Freedom of speech). No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right, every person shall be responsible.

Article I, Section 31. (Right of assembly and petition). No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

- United States Constitution

First Amendment. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Relevant Constitutional References

The U.S. Constitution was ratified in 1787. The first ten amendments, called the Bill of Rights, were ratified in 1791. Most of the original thirteen colonies had bills of rights with their constitutions when they formed the Union. Each new state which entered the Union had a constitution. Indiana's original 1816 constitution included a Bill of Rights of 24 sections in Article I. The 1851 Indiana constitution contains 37 sections in Article I, known as the Bill of Rights, and gives more rights to citizens than the federal Bill of Rights.

The rights enshrined in the U.S. Bill of Rights are considered so fundamental, nearly sacred, that they were spelled out as protections to citizens from encroachment by the federal government. State constitutions likewise protected the rights of citizens from encroachment by state government.

The rights enumerated in the U.S. Bill of Rights are connected by the thread of "natural rights" to Roman times. The concept of "natural rights" assumes that all humans are born with certain rights that cannot be transferred or taken away.

Some of these rights are specified in the Magna Carta in 1215 A.D., the English Bill of Rights in 1689, and the United States Declaration of Independence, Constitution, and Bill of Rights.

Freedom of expression is a guarantee of both the U.S. and the Indiana Bills of Rights. A much-debated issue is the limit on freedom of expression, especially when applied to juveniles in schools.

Historical Context

Traditionally, schools have been viewed as agents of socialization for our society. Students are to learn basic survival skills and societal expectations. Due to its custodial nature and the age of its clientele, the school has had virtually unlimited power over the civil liberties of its students. As long as the physical well-being of the student was not jeopardized, schools in the first half of the 1900s set the rules for students.

The late 1960s and the 1970s brought about many legal challenges to school control. The results were restrictions on the powers of schools and a more careful and thorough definition of the rights of students.

Broad interpretations of state and federal statutes have severely limited rights of student expression. A few Supreme Court cases in recent years have challenged the authority of schools, but schools retain great control over students' lives during their hours of attendance. Student freedom of expression has been greatly limited by the schools.

Several court cases have addressed this issue over the years. Some cases deal specifically with students' rights in the school as they relate to student speech and publications. Should the constitutional guarantees of freedom of speech and press apply to school students? Strong arguments support each side of the issue.

The Arguments Pro and Con

Some Pro Positions

Yes, the provisions of the Indiana Bill of Rights regulating freedom of expression should apply to students in schools.

1. Freedom is not dependent on age.

Nowhere in either the U.S. Constitution or the Indiana Constitution is there an age requirement for the exercise of those freedoms. Students in school need to learn the lessons of citizenship and the responsibilities that come with their rights. School is the socializing agent which allows students to learn and practice rights and responsibilities.

2. Federal and state constitutional guarantees were established in order to protect citizens from governmental abuses.

These basic freedoms do not specify that they apply only to select individuals in select circumstances.

3. Everyone's personal liberty is at risk if any individual's personal liberty is at risk.

Our rights are only as strong as our protection of the rights of our weakest, most vulnerable citizens. We must work to guarantee these basic rights to all, even if we disagree with what may be written or spoken. As the Indiana Constitution states, ". . . for the abuse of that right, every person shall be responsible."

No, the provisions of the Indiana Bill of Rights regulating freedom of expression should not apply to students in schools.

1. Freedom has its limits.

Freedoms of all citizens do have restrictions upon them and are regulated. Schools are agents of society and are regulated as well. Students are to go to school to master an established curriculum, not to challenge and debate the guidelines under which their instruction is provided.

2. Student behavior is regulated by Indiana law so that instruction for all can be accomplished.

“Grounds for Expulsion or Suspension” are defined in the *Indiana Code*, Title 20, Article 8.1, Chapter 5, Section 4(b)(1)(F):

Continuously and intentionally making noise or acting in any manner so as to interfere seriously with the ability of any teacher or any of the other school personnel to conduct the educational function under his supervision. Section 4(b)(1) continues:

This subdivision shall not, however, be construed to make any particular student conduct a ground for expulsion where such conduct is constitutionally protected as an exercise of free speech or assembly or other right under the Constitution of Indiana or the United States.

3. In order to provide and demonstrate appropriate instruction, schools may restrict individual freedom of expression.

As the *Bethel School District v. Fraser* (1986) case ruled, “The First Amendment guarantees wide freedom in matters of adult public discourse. . . . It does not follow . . . that the same latitude must be permitted to children in a public school.” Chief Justice Warren E. Burger continued that “. . . schools must teach by example the shared values of a civilized social order.” The U.S. Supreme Court held, 7-2, that, as Burger said, “Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.”

In *Hazelwood School District v. Kuhlmeier* (1988), a censorship case dealing with publication of a school newspaper, the U.S. Supreme Court ruled that the school could prohibit any “. . . speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences.”

4. Limits or regulations apply to young people in many aspects of their lives.

There may be curfews for them in the local community. There is a separate justice system for juveniles. Some other limitations because of age include the purchase of tobacco products, admission to certain movies, the purchase of a firearm, and obtaining a license to drive or to marry.

Bibliography

- Constitution of Indiana, *Indiana Code*, Vol. 1, pp. 1-31 (Indianapolis, 1988).
- Constitution of the United States.
- *Facts on File*, January 18, 1985 ed., s.v. "Student Rights" and "New Jersey v. T.L.O."
- *Indiana Code* 20-8.1-5-4.

Some Relevant Court Cases

- *Bethel School District v. Fraser*, 478 U.S. 675 (1986).

This case resulted in a reduction in student free speech rights. Students may not say in school the same things that they can say outside of school.

- *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

The principal of a Missouri public high school ordered two pages of a journalism class newspaper deleted. Three students brought suit. The students won in the court of appeals. The U.S. Supreme Court reversed, saying that the school could uphold community values and that the principal made his decisions based on educational considerations to which the court must defer.

- *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

In 1965 three students, in violation of a recent ban on wearing armbands, wore black armbands to school to protest the Vietnam War. The court of appeals affirmed a lower court's ruling that the students were in error. The U.S. Supreme Court reversed, holding that schools cannot interfere with student speech not threatening disorder or disruption of education.

What Do You Think?

1. Has your school had recent censorship issues? How were they handled? Do you agree with the decision? Why/why not?
2. What factors do you consider to be most significant in debating school censorship issues? Why did you select these factors?
3. How should school censorship issues be handled by a school? What factors should be considered in resolving the issues?
4. Does your school have a dress code? How was it formulated? How is it enforced? Does a dress code fall into the category of freedom of expression? Why/why not?

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1. Research the specifics of the *Hazelwood School District v. Kuhlmeier* (1988) decision. Do you agree with the decision? Why/why not?
 2. How far does the concept of freedom of expression extend? What should be the limits, if any, for student freedom of expression? Why/why not?

**Continuing
to Explore**

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- Alderman, Ellen, and Caroline Kennedy. *In Our Defense: The Bill of Rights in Action*. New York: William Morrow and Company, Inc., 1991.

**For More
Information**

Authors examine the historic and legal importance of each amendment and place a human face on each by describing specific court cases and the people involved.

